IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/09/2003

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The Honourable Mr. Justice A.K. RAJAN

W.P. No.14609 of 2000 and W.P.No. 13172 of 2002
and
W.M.P. No.21165 of 2000

V. Seetha ... Petitioner in
both W.Ps.

-Vs-

1. Tamil Nadu Civil Suplies
Corpn. Ltd.,
rep. by its Senior Regional
Manager,
Gopalapuram,
Chennai - 600 086. ... 1st respondent in
W.P.No.14609 of 2000&
2nd respondent in
W.P. No.13172 of 2002
2. Tamil Nadu Civil Supplies
Corpn. Ltd.,
rep. by its Chairman-cum-
Managing director,
Chennai 600 010. ... 2nd respondent in
W.P. No.14609 of 2000

3. The General Manager(Admn.)
Tamil Nadu Civil Supplies
Corporation Ltd.
42, Thambuswamy Road,
Chennai 10. ... 1st respondent in
W.P. No.13172/2002

Petitions under Article 226 of the Constitution of India,
praying to issue a writ of certiorari and writ of mandamus.

For Petitioner : Mr. S. Venkataraman

For Respondent : Mr. V. Perumal

:O R D E R

W.P. No.14609 of 2000 has been filed praying to issue a writ of certiorari, to call for records relating to the proceedings Rc.No.A9/102 44/98-I dt.4.6.98 of the first respondent as confirmed by the proceedings Rc.No.G1/84959/98 dt.6.12.99 of the second respondent and quash the same.

2. W.P. No.13172 of 2002 has been filed praying to issue a writ of mandamus, directing the respondents to award selection grade to the petitioner from the date she completed ten years of service in the ordinary grade of Deputy Manager (Accounts) in term of the Circular Rc. No.E5/150148/99 dt.17.12.2000 with immediate effect.

3. The petitioner was working as a Deputy Manager (Accounts) in Anna Nagar branch of Civil Supplies Corporation. While she was working, charges were framed and departmental enquiry was conducted. After completion of enquiry, it was found that all the charges were proved. After complying

with all the formalities, the punishment of stoppage of increment for a period of three years with cumulative effect was passed and also a sum of Rs.9,967/- was ordered to be recovered from the petitioner.

4. Aggrieved against the same, the petitioner has filed an appeal as per the Rules before the Appellate Authority. The Appellate Authority concurred with the view of the Disciplinary Authority and confirmed the punishment imposed on the petitioner. The petitioner filed writ petition No.14609 of 2000, challenging the order of punishment as confirmed by the Appellate Authority. The petitioner has also filed W.P. No.13172 of 2002 to award selection grade on her completion of ten years.

5. Learned counsel for the petitioner submitted that even according to the respondents, the petitioner was working in Anna Nagar Branch between May, 1993 and July, 1993. But according to the charge memorandum, audit was conducted for the period from 31.03.1990 to 30.12.19 90 and some irregularities were found, with respect to the deposit of Pay Commission arrears received from the Government and non deposit of D.A. Amounts for the period of 1/92 to 4/92, 7/92 to 9/92 and 1/9 3 to 4/93. Therefore, there is no basis for the above charges.

6. Learned counsel for the petitioner also points out that Chapter 5 of the Tamil Nadu Civil Supplies Corporation Employees Service Regulations1, 1989 deals with disciplinary proceedings, penalties and appeal regulations, wherein Rule 4 says as follows:-

" (a) The competent authority as per Regulation 2, may either suo moto or on receipt of report as per explanation under that regulation or as indicated in Regulation 3 shall issue a memo recording the basis of charge, quoting the relevant rules or instructions omitted to be followed, the consequent result of such omission with specific charges suitably framed and the delinquent should be informed of the list of documents relied upon as the basis of charge, the list of witnesses whose versions also form the basis of the charge. The delinquents should then be required to furnish the list of witnesses if any on his defence within a reasonable time failing which the

presumption would be that he has no witnesses on his defence.

The competent authority to impose the major penalty thereon shall appoint an enquiry officer, immediately subordinate to him (punishing authority) to conduct an objective enquiry into the charges in the presence of the delinquent who should have been given due notice therefor. At the enquiry, the documents relied upon in the charge memo should be made available to the delinquent for perusal. The delinquents may also be permitted to peruse any other record of the Corporation that are relevant to the charges, if he/she so desires,. If for any reason such records, desired to be perused, are considered to be not relevant to the charges, the enquiry officer shall record so in his findings. So also the witnesses whose versions form the basis of the charges should be examined providing opportunity to the delinquent to cross examine. Thereon the witnesses produced by the delinquent should be examined with due relevance to the charges. The delinquent may also be permitted to file his written statement."

7. As per this rule, the delinquent must be furnished with copies of documents, which are relied upon by the respondents in the proceedings. But the charge memo issued to the petitioner does not reveal that such documents have been furnished to the petitioner. Therefore the procedure adopted is not in accordance with the rules.

8. Further, learned counsel submitted that the Enquiry Officer has found the charges proved on the ground that the petitioner did not prove her case by adducing any evidence or marking documents. Therefore, the Enquiry Officer's report is vitiated as it is not based on any evidence. Therefore, it cannot be relied upon for further proceedings. The Appellate Authority has also not considered any of the points raised by the petitioner, but simple confirmed the order passed by the Disciplinary Authority. Hence on these grounds, the orders may be set aside.

9. On these points, learned counsel for the respondents submitted his arguments. In the counter affidavit, it is specifically stated that though the charge memo was issued based on the audit of accounts taken for the period from 21.3.92 to 30.11.95, the punishment was restricted to the quantum of misappropriation taken place during her tenure from 7.5.93 to 1.8.95.

10. Considering the arguments advanced by the learned counsel for the petitioner and the respondents, it is clear that the Enquiry Officer did not have any evidence with him either documentary or oral. The Enquiry Officer's report reveals that no witness has been examined or no document was marked. There is no evidence even to prove the fact that the audit report was with the Enquiry Officer. The Enquiry Officer has given a finding that since no document is produced by the delinquent Officer, the Enquiry Officer found the charges proved, that is how he has found the charges proved. He also had shifted the burden on the delinquent Officer to disprove all the charges.

11. It is basically contrary to the principles of natural justice as well as rules prescribed, which are to be followed in the

departmental proceedings. The Enquiry officer has not followed the rule or regulation for conducting the enquiry. Without even following the rules that were to be followed, the Enquiry Officer has given finding. Unfortunately, the Appellate Authority also did not look into these aspects and simply concurs with the view expressed by the disciplinary authority. Therefore, the entire proceedings including the Enquiry Officer's report and the Appellate Authority's order are vitiated as they are not in accordance with law and they are liable to be set aside.

12. Learned counsel for the petitioner submitted that the petitioner has now retired from service on 30.04.2002. Therefore, even if the Court finds that the procedure adopted is not legal, the matter cannot be remanded back for fresh enquiry. The argument of the learned counsel for the petitioner is acceptable since the petitioner was not kept under suspension and she was allowed to retire on 30.04.2002. Therefore, when the person has been allowed to retire from service, thereafter, no enquiry can be conducted or pending enquiry can be continued as per the rules.

13. In the circumstances, it is not possible for remitting the matter back to the Enquiry Officer for conducting fresh enquiry. Consequently, all the charges are to be dropped and no punishment can be imposed. Therefore, the punishment imposed by the Enquiry Officer as confirmed by the Disciplinary Authority is set aside. The Authorities shall return all the amounts recovered or withheld from her within a period of four weeks from the date of receipt of copy of this order.

14. As W.P. No.14609 of 2000 is allowed, it is directed that if the petitioner is eligible for selection grade in accordance with the rules, she must be given all monetary benefits in accordance with the rules.

15. The writ petitions are allowed in the above terms. Consequently, the connected C.M.P. is closed.

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To
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